

(1938) 10 MAD CK 0017
In the Madras High Court

Cherutty alias Vasu and Another

APPELLANT

Vs

Nagamparambil Raru alias Kuttaman and Others

RESPONDENT

Date of Decision : 24-10-1938

Acts Referred:

Citation : (1939) 1 MLJ 683

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal arises out of a suit brought by the first plaintiff, his wife (the second plaintiff) his son (the third plaintiff) and his

daughter (the fourth plaintiff) against the defendants who represent a collateral branch of the same family, claiming arrears of maintenance, on the

basis that the family is undivided. The lower appellate Court, though it expressed a very strong opinion that the family was not undivided,

unfortunately gave no finding on the subject and the whole suit was dismissed on the ground that a coparcener cannot claim maintenance but should

sue for partition. This decision overlooks the fact that neither the second plaintiff nor the fourth plaintiff are coparceners, one being the wife and the

other the daughter of a coparcener. There is no appeal by the first and second plaintiffs. The appeal is preferred only by the third plaintiff (the son)

and the fourth plaintiff (the daughter).

2. The contention in appeal based on the observations of the Privy Council in (1918) L.R. 45 I.A. 148 (Privy Council) is that the son is entitled to

be maintained out of the joint family property because he is a coparcener and that the daughter is entitled to be maintained out of the joint family

property because she is a female member of the family whom the family is

obliged to maintain until her marriage. The grounds on which the claim is made are therefore different in the case of the son from those in the case of the daughter. As to the claim of the son, it is, I think, undoubtedly the ordinary rule that a coparcener cannot claim maintenance if he is entitled to claim partition. Objection has been taken on the ground that the authorities quoted in the text books in support of this proposition are all Bombay authorities. But the proposition is stated both by Mr. Mayne and Sir Dinshaw Mulla in general terms and no Madras authority to the contrary has been quoted before me.

3. Mr. Ramakrishna Aiyar has quoted two Lahore cases, one which is that of Bhagwan Singh v. Mst. Kewal Kaur I.L.R.(1927) 8 Lah. 360 where

a. widow claiming maintenance for herself and her minor son and daughter was given a decree against the assets of the joint family, comprising a

certain allowance for the widow and an, additional sum for each of the minor children. In this case, the learned Judges did not consider the

question whether the minor boy should or should not have brought a suit for partition and the fact that he had rights as a coparcener as distinct

from his rights as a minor entitled to maintenance is not referred to. The other case quoted is that of Ramdas v. Leachman Das AIR 1936 Lah. 853

which was a case in which two grandsons sued their grandfather for maintenance during the lifetime of their father. It was observed that the

grandfather's liability for maintenance arose only owing to the possession of joint family properties in his hands. This was of importance as affecting

the question of jurisdiction which was the question actually decided in that case and no decision was given on the merits of the suit which was

remanded for disposal in the light of the decision on the jurisdiction question. I do not think this case can be treated as an authority for the

proposition that the sons can get a decree for maintenance against the manager of the family during the lifetime of their father without claiming a

partition. The argument which has the greatest force with reference to the claim of the son rests on the fact that the minor son's right to claim

partition is not an absolute right, whereas he has an absolute right to be maintained out of the family property-at any rate, to the extent of his share;

and it is argued that if he can claim partition only in circumstances which make it necessary to divide the family property in his interests, there would

be no remedy for the refusal of maintenance in circumstances which do not make the partition desirable in his interests. I do not think it necessary for me for the purpose of the present case to lay down that in no circumstances could a Court give a decree for maintenance against the family properties in favour of the minor coparcener. But it does appear to me that in the vast majority of cases where the circumstances would justify a decree for maintenance, they would also justify a decree for partition and it should, in my opinion, be open to the Court to pass that decree which the Court thinks best in the interests of the minor whose rights have been denied. From this, it seems to me to follow that a minor coparcener who has been denied maintenance and wishes to claim maintenance should bring his suit in the alternative claiming partition or maintenance as the Court thinks fit, unless his guardian decides to adopt the usual form of a suit claiming partition in the property. I doubt very much whether a minor coparcener has a right to claim maintenance without at least putting it within the power of the Court to give the ordinary relief of partition should the Court think fit. It seems to me obvious that a claim for separate maintenance by a coparcener without any partition is likely to lead to great complications in any subsequent working out of his right to partition.

4. With reference to the claim of the daughter, I doubt very much whether the daughter during the lifetime of her father is entitled to bring a suit directly against the manager of the joint family property, ignoring the fact that the primary responsibility for her maintenance is upon the father and his properties, both joint and separate. In the present case, we have the curious position of the father and the daughter joining together to sue the manager for the daughter's maintenance. A daughter whose father is a member of a joint Hindu family has a right to be maintained by her father and out of his share in the joint family property. To allow her to get a decree directly against the manager of the joint family property would, in my opinion, be to create a situation which would almost certainly lead to complications and probably to injustice. Her maintenance would have to be charged on a particular item. That item might well be sold in execution of her decree. If that were done, would the father be allowed at a subsequent partition to take his full share of the balance of the joint family properties ignoring the fact that one item had been taken away to satisfy

a liability which is primarily his own. It is suggested that a decree could be given and the charge could be made subject to a proviso that if it were realised, the item of property sold should be treated as part of the share of the father. It does not seem to me practicable to make any such provision which would have the effect of attempting a partial partition. It seems to me that the proper course for a daughter to adopt if, during the lifetime of her father, she has been denied maintenance, is not to bring a suit for maintenance against the manager of the joint family, but to bring a suit against her father claiming maintenance out of his properties, joint and separate. After she has got her decree, she may, if necessary, enforce it by the sale of her father's share in the joint family properties. This would presumably lead to a proper partition in which the rights of each branch of the family could be equitably worked out. Seeing that the daughter's right is primarily against her father's share and that is a right which is derived from him, I do not consider that she should be allowed to bring a suit directly against the person in charge of the family properties, instead of proceeding against the person who is primarily responsible for her maintenance and whose share in the family properties is ultimately liable.

5. In the result, therefore, I dismiss the appeal with costs.

6. Leave to appeal granted.